

BEFORE THE IDAHO BOARD OF TAX APPEALS

IN THE MATTER OF THE APPEAL OF CYNTHIA BENNETT
AND EDWARD SCHWEIZER from the decision of the
Board of Equalization of Ada County for tax year 2006.

) APPEAL NO. 06-A-2094
) FINAL DECISION
) AND ORDER

HOMEOWNER EXEMPTION APPEAL

THIS MATTER came on for hearing October 3, 2006, in Boise, Idaho, before Hearing Officer Sandra Tatom. Board Members Lyle R. Cobbs and David E. Kinghorn participated in this decision. Owner Cynthia Bennett appeared for herself. Chief Deputy Tim Tallman and Appraiser Chirs Holman appeared for Respondent Ada County. This appeal is taken from a decision of the Ada County Board of Equalization (BOE) denying the protest of the valuation for taxing purposes of property described as Parcel No. S0308449200.

The issue on appeal is whether subject property qualifies for an exemption from property taxes pursuant to Idaho Code § 63-602G.

The decision of the Ada County Board of Equalization is reversed.

FINDINGS OF FACT

The assessed land value is \$65,000, and the improvements' valuation is \$153,400, totaling \$218,400. Appellants claim subject qualifies for exemption pursuant to Idaho Code § 63-602G (homeowner's exemption).

The subject property is 12.750 acres together with improvements, located near Eagle, Idaho. The residence was purchased for \$1 and moved from Hays Street to the subject property in 2004. Appellants are not appealing the assessed value, only the denial of the homestead (homeowner's) exemption. Appellants' exhibit included a copy of a Certificate of Occupancy dated June 2, 2006, a BOE notice and hearing information from Ada County, Appellants' BOE appeal form, Appellants' Board of Tax Appeals appeal form, the 2006 assessment notice, Homeowner's exemption application form dated June 2, 2006, and a copy of a second

homeowner's exemption form.

According to Appellants, subject residence was placed on a new 2,000 square foot basement and the interior had to be totally updated to meet current existing codes. An 1,800 square foot addition was added to the back of the residence. Since the residence had to be brought up to code, and the basement and back half of the house was new construction, Appellant considered the residence "new construction". Appellants' exhibit included photographs of subject residence, a shed, and recreational vehicle where Appellants lived during the remodeling and a semi trailer which was used for storage.

Appellant visited the Assessor's office to sign up for the homestead exemption. She was reportedly told one could not be filed until the Certificate of Occupancy was issued. Appellant testified at hearing to these facts.

Respondent submitted an exhibit which included a homeowner's exemption form. The form was signed by Appellant and dated June 2, 2006.

Respondent contended prior to January 1, 2006, Appellants were living on site, and under these circumstances, would have had to apply for the homeowner's exemption by April 15, 2006 for it to apply in 2006. Appellants June 2, 2006 application was after the statutory deadline.

Respondent explained that similar to mobile homes that are moved from one location to another, subject was assessed as a non-occupancy residence, taxable for the full year. Respondent did not consider subject improvements as newly constructed and "occupancy" improvements. Under the non-occupancy circumstances, it was argued, the homeowner's exemption must be applied for by April 15 of the tax year.

CONCLUSIONS OF LAW

This Board's goal in its hearings is the acquisition of sufficient, accurate evidence to

support a determination of exempt status. This Board, giving full opportunity for all arguments and having considered all testimony and documentary evidence submitted by the parties in support of their respective positions, hereby enters the following.

The issue in this appeal is the proper application of the homeowners exemption.

Appellants moved a structure to the subject property in 2004. The structure was placed on a full basement, a large addition added and the original structure extensively refurbished to meet current building code specifications. Appellants lived on the property since 2004. During the remodeling and construction phase they occupied the original part of the structure. According to the record, this occupancy was the first of 2006.

The subject residence was assessed based on the extent of finish on January 1, 2006. It was not assessed as new construction, taxable on occupancy.

Appellants were denied the opportunity to complete a homeowner's exemption form in January or February. Taxpayers were told the exemption would not be considered or applied to subject until a Certificate of Occupancy was issued. The Certificate was issued on June 1, 2006 and Appellants filed the exemption form on June 2.

The homeowner's exemption is described in Idaho Code § 63-602G. Section (2)(a) defines the qualifications and time frames for application of the exemption:

(2) The exemption allowed by this section may be granted only if:

(a) The homestead is owner-occupied and used as the primary dwelling place of the owner as of January 1, provided that in the event the homestead is owner-occupied after January 1 but before April 15, the owner of the property is entitled to the exemption. The homestead may consist of part of a multidwelling or multipurpose building and shall include all of such dwelling or building except any portion used exclusively for anything other than the primary dwelling of the owner. The presence of an office in a homestead, which office is used for multiple purposes, including business and personal use, shall not prevent the owner from claiming the exemption provided in this section;

In this case, the record indicates erroneous contributed to the timeliness of filing. Ownership and occupancy by a specified date are critical components on the law.

The Board is convinced the subject residence was owner-occupied prior to April 15, 2006. Subject property was the primary dwelling place of Appellants. We are convinced Appellants were advised the application for exemption could not be filed prior to the issuance of a Certificate of Occupancy. It was clarified at hearing that a Certificate of Occupancy was not necessary before a homeowner's exemption could be granted. The confusion was probably based on differing meanings of new construction to the different entities involved. In the absence of confusing information, Appellants would have timely filed for the exemption.

Therefore, we find Appellants are fairly entitled to the homeowner's exemption on the subject property for the 2006 tax year.

FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decision of the Ada County Board of Equalization concerning the subject parcel be, and the same hereby is, reversed, granting the homestead exemption.

IT IS FURTHER ORDERED that any taxes which have been paid in excess of those determined to have been due be refunded or applied against other *ad valorem* taxes due from Appellants.

DATED this 16th day of February, 2007.